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APPLICATION N	O.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/633,945		08/04/2003	Michael S. Tyndall	KOM 4295	5207		
321	7590	09/29/2006		EXAM	EXAMINER		
SENNIG	SENNIGER POWERS				TONGUE, LAKIA J		
ONE METROPOLITAN SQUARE 16TH FLOOR				ART UNIT	PAPER NUMBER		
ST LOUIS	ST LOUIS, MO 63102			1645			
				DATE MAILED: 09/29/200	6		

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary Examiner Lakis J. Tongue Lakis J. L		Application No.	Applicant(s)						
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The MALING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, PROM THE MAILING DATE OF THIS COMMUNICATION. WHICHEVER IS LONGER, PROM THE MAILING DATE OF THIS COMMUNICATION. If NO period for reply is specified above, the meaning date of this communication is the state Std, MONTHS from the mailing date of this communication. Preplice to reply within the set or communication with 5 states and the specified above, the meaning date of this communication. Preplice to reply within the set or communication of the state of the specified above, the meaning date of this communication, which is the second shallocker (SU SL 2, 5 133). Bis action is period to communication (s) filled on 17 July 2006. 2a) This action is FINAL. 2b) This action is non-flinal. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1,3-57-11,17-29 and 54-62 is/are pending in the application. 4a) Of the above claim(s) 12-16,38,40,41 and 44-51 is/are withdrawn from consideration. 5) Claim(s) 1,3-17-28 and 54-61 is/are rejected. 7) Claim(s) 1,3-17-28 and 54-61 is/are rejected. 7) Claim(s) 4,5-7-11,17-29 and 54-62 is/are rejected. 7) Claim(s) 1,3-17-28 and 62 is/are rejected. 7) Claim(s) 4,5-7-11,17-29 and 54-61 is/are objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Application Papers 11) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). 2a) All b) Some **o(j) None of: 1 or certified copies of the priority documents have been receiv	Office Action Summary	Examiner	Art Unit						
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DETAILED ACTION

Applicant's response filed on July 17, 2006 is acknowledged. Claims 1, 3-5, 7-11, 17-29 and 54-62 are pending and under consideration. Claims 12-16, 38, 40, 41 and 44-51 have been withdrawn from consideration. Claims 2, 6, 30-37, 39, 42, 43, 52 and 53 have been canceled.

The text of those sections of Title 35, U.S. Code not included in this action can be found in the prior Office Action.

Rejections/Objections Withdrawn

- 1. In view of applicants' amendment the rejection of claims 1, 3-5, 7-11, 17-29 and 52-62 under 35 U.S.C. 112, first paragraph (scope of enablement) on page 3, paragraph 8 is withdrawn.
- 2. In view of applicants' arguments and evidence the objection to the specification for purportedly misspelling words on page 5, paragraph 9 is withdrawn.
- 3. In view of applicants' amendment the rejection of claims 1, 3, 4, 8, 9, 24, 28, 29, 52 and 53 under 35 U.S.C. 102(b) as being anticipated by Jampani et al on page 5, paragraph 10 is withdrawn.

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Applicant's response filed on July 17, 2006 is acknowledged. Claims 1, 3-5, 7-11, 17-29 and 54-62 are pending and under consideration. Claims 12-16, 38, 40, 41 and 44-51 have been withdrawn from consideration. Claims 2, 6, 30-37. 39, 42, 43, 52 and 53 have been canceled.

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4. In view of applicants' arguments the rejection of claims 1, 7, 28, 29, 52 and 53 under 35 U.S.C. 102(b) as being anticipated by Lee et al on page 7, paragraph 11 is withdrawn.

New Grounds of Rejection Necessitated by Amendment Claim Objections

5. Claims 4, 5, 7-11, 18-27 and 54-61 are objected to for depending on rejected based claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
- 6. Claims 1, 3, 17, 28, 29 and 62 are rejected under 35 U.S.C. 102(e) as being anticipated by Eisenberg (U.S. 2005/0015854 A1).

Claims 1, 3, 17, 28, 29 and 62 are drawn to a topical veterinary composition for the treatment of bovine mastitis comprising iodine as an anti-microbial agent and a phospholipid-containing skin conditioner, wherein the phospholipid is selected from the group consisting of: linoleamidopropyl phosohatidylglycerol dimonium chloride

phosphate; sunfloweramidopropyl phosohatidylglycerol dimonium chloride phosphate; sodium olivamidopropyl phosohatidylglycerol dimonium chloride phosphate; stearamideopropyl phosohatidylglycerol dimonium chloride phosphate; ricinoleamidopropyl phosohatidylglycerol dimonium chloride phosphate; dilinoleamidopropyl phosohatidylglycerol dimonium chloride phosphate; poly (ethylene glycol)_{n=8} dimethicone sunfloweramidopropyl phosohatidylglycerol dimonium chloride phosphate complex; dimethicone saffloweramidopropyl phosohatidylglycerol dimonium chloride phosphate complex; sodium grapeseedamidopropyl phosohatidylglycerol dimonium chloride phosphate; and sodium boregeamidopropyl phosohatidylglycerol dimonium chloride phosphate.

Eisenberg discloses compositions comprising phospholipids selected from GLA Phospholipid (Sodium Boregeamidopropyl Phosohatidylglycerol Dimonium Chloride Phosphate) at 0.5% of the solution and PTC Phospholipid (Cocamidopropyl Phosohatidylglycerol Dimonium Chloride Phosphate) at 1.5% of the solution (abstract). Moreover, Esienberg discloses that the composition further comprises iodine (paragraph 0060), tocopherols (paragraph 0107) and suitable surface-active agents (paragraph 0114).

Claim limitations such as "for the treatment of bovine mastitis" are being viewed as an intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim

drawn to a process of making, the intended use must result in a manipulative difference as compared to the art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 458

Since the Office does not have the facilities for examining and comparing applicants' composition with the composition of the prior art, the burden is on applicant to show a novel or unobvious difference between the claimed product and the prior art. See In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and In re Fitzgerald et al., 205 USPQ 594.

Conclusion

- 7. No claim is allowed.
- 8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakia J Tongue whose telephone number is 571-272-2921. The examiner can normally be reached on Monday-Friday 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Mark Navarro can be reached on 571-272-0861. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.